IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5671 OF 2005

Frank Santan Britto & Ors. ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr.Joseph G. Thattil for the Applicants
Ms S.D.Shinde,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 14,2005

P.C.:

1. Heard Advocate for the Applicants and the learned A.P.P. for the State. The present application is made by the prosecution witnesses in Regular Criminal Case No.835 of 1995 pending in the Court of the learned Chief Judicial Magistrate, Thane. The prayer in this application is for issuing direction to the learned Chief Judicial Magistrate to record the cross examination of the Applicant No.2 and the evidence of remaining applicants peremptorily by keeping the trial on day to day basis. The grievance of the Applicants is that recording of evidence of Applicant No.1 started on 17th September 2003 and was completed in March 2005. Thereafter, the case was adjourned from time to time. On 19th July 2005 examination-in-chief of the Applicant No.2 was recorded. and the case was adjourned to 23rd August 2005 for cross examination of the Applicant No.2. On 23rd August 2005 the Applicant No.2 could not remain present due to illness and now the next date fixed is 12th September 2005. It is stated in

the application that the Applicants have to travel all the way from Bhayandar to Thane and are required to wait till the court hours are over. It is stated that the Applicants are senior citizens and therefore necessary directions may be issued.

2. This Court called for the report from the learned Chief Judicial Magistrate, Thane. In the said report, it is stated that on 7th November 2003, when the case came up before him the Applicant No.1 sought adjournment. On 20th September 2004 the Applicant No.1 sought adjournment. He has recorded in the report that he has been assigned more than 9000 cases and every day he has to do a lot of remand work pertaining to five police stations. He has stated that being the Chief Judicial Magistrate, he has lot of administrative work to do. He has recorded several difficulties in the case. The extract of the roznama shows that the originally witness summons was issued only to the Applicant No.1 and by order dated 29th March 2005 the witness summons was ordered to be issued to the remaining witnesses.

3. Considering the fact that the learned Judge has a heavy file to look after which consists of more than 9000 cases, it is difficult to expect the learned Judge to take up the case on day to day basis. Therefore, the prayer made for directing the learned Judge to take up the case on day to day basis

cannot be granted.

4. Nevertheless it must be noted that the case is of the year 1995 and is pending for last 10 years. If the learned Judge does not have many ready cases on his file which are of the year prior to 1995, this case needs to be given preference. If there are no older cases which are ready for hearing on the file of the learned Judge, he will give preference to the trial of the case and will conclude the trial expeditiously.

5. Subject to the direction given above, application is rejected.

JUDGE